

BOARDS AND COMMISSIONS
Board of Licensure for Massage Therapy
(New Administrative Regulation)

201 KAR 42:061. Code of ethics and standards of practice for massage therapists.

RELATES TO: KRS 309.355(1), (3), 309.362

STATUTORY AUTHORITY: KRS 309.355(1), (3)

NECESSITY, FUNCTION, AND CONFORMITY: KRS 309.355(1) requires the Board of Licensure for Massage Therapy to administer and enforce the provisions of KRS 309.350 to 309.364. KRS 309.355(3) requires the board to establish by administrative regulation a code of ethics and standards of practice for massage therapists. This administrative regulation establishes those standards, which, if violated, are a basis for disciplinary action under KRS 309.362.

Section 1. Code of Ethical Standards for the Massage Therapist. A massage therapist shall:

- (1) Maintain the confidentiality of all client information, unless law or court order mandates disclosure;
- (2) Keep the client well informed of procedures and methods that will be employed during the session;
- (3) Report to the board if the massage therapist has first-hand knowledge or evidence indicating any unethical, incompetent, or illegal act has been committed by another licensee;
- (4) Take precautions to do no harm to the physical, mental, and emotional well-being of clients or associates;
- (5) Make every reasonable effort to report unlicensed practice of massage therapy to the board;
- (6) Represent his or her educational and professional qualifications honestly;
- (7) Inform clients of the limitations of the licensee's practice;
- (8) Consistently take measures to improve professional knowledge and competence by a regular assessment of personal and professional strengths and weaknesses through continuing education training;
- (9) Respect the client's right to treatment with informed and voluntary consent, either verbal or written, and to refuse, modify, or terminate treatment regardless of prior consent;
- (10) Not engage in sexual conduct or activities with a client;
- (11) Not engage in an interest, activity, or influence that conflicts with the practitioner's obligation to act in the best interest of the client;
- (12) Respect the client's boundaries with regard to privacy, disclosure, exposure, emotional expression, beliefs, and reasonable expectations of professional behavior;
- (13) Refuse to accept gifts or benefits, which are intended to influence a referral or treatment that are purely for personal gain and not for the good of the client;
- (14) Conduct all business and professional activities with honesty and integrity;
- (15) Respect the inherent worth of all clients;
- (16) Provide only those services that the licensee is qualified to perform; and
- (17) Respect the client's autonomy.

Section 2. Standards of Practice for the Massage Therapist. (1) In the practice of massage therapy, a massage therapist shall:

- (a) Perform a written or verbal intake interview with the client to evaluate if any contraindications to massage therapy exist and if modifications including pressure, technique, and duration of treatment are applicable;
- (b) Evaluate each client through observation, palpation, and any relevant records provided by the client;
- (c) Acknowledge the limitations of, and contraindications for, massage;
- (d) Plan and implement a treatment session or program individualized for the client;
- (e) Refer the client to other professionals or services if the treatment or service is beyond the massage therapist's scope of practice;
- (f) Maintain for a minimum period of five (5) years accurate, timely, and organized records of every client;
- (g) Provide massage therapy services that meet or exceed the generally accepted practice of the profession;
- (h) If a plan of care or treatment is applicable, explain the plan to the client, to others designated by the client, and to professionals with client permission;
- (i) Unless prohibited by law, be allowed to pool or apportion fees received with other members of a business entity in accordance with any business agreement;
- (j) Practice massage therapy in sanitary and safe conditions;
- (k) Use proper draping technique;
- 1. Before beginning a massage, the therapist must explain to the client the draping techniques that will be used; and
- 2. Provide the client a clean drape large enough for the purpose of draping the buttocks, genitalia, and chest. Such body parts must remain covered except during therapeutic treatment of those specific areas, with the exception of the genitalia, which shall always remain covered; and
- (l) Have the right to refuse to treat any person or part of the body at the licensee's discretion.
- (2) In the practice of massage therapy, a massage therapist shall not:
 - (a) Provide treatment to the anus or anal canal, including, but not limited to, colonic irrigations and enemas; or
 - (b) Provide treatment to the genitals, including, but not limited to, erectile dysfunction or pelvic floor issues.
- (3) Interacting with other medical professionals. With written permission from the client, the massage therapist may interact with the client's physician or other healthcare providers if the client is under direct medical care.
- (4) If the client is self-referred and under the care of a health care professional, the massage therapist may, with written permission from the client:
 - (a) Advise the health care professional that the patient is seeking massage treatment;
 - (b) Provide to the health care professional the massage therapist's evaluation results;
 - (c) Advise the health care professional of the noted treatment plan; and
 - (d) Provide a follow-up report upon completion of the massage treatment plan to enhance communication between the multidisciplinary care-giving team.
- (5) Breast massage. A licensee performing massage of the tissue of the breast shall:
 - (a) Obtain the client's informed written consent prior to providing the service;
 - (b) Maintain proof documenting specialized training in breast massage which addresses breast anatomy, breast pathology, and breast massage technique and which was provided by an approved massage therapy program or board approved continuing education provider;

(c) Inform the client prior to the commencement of the service that this service may be performed through a draping sheet if the client so desires and the licensee shall provide the service through a draping sheet if the client so prefers;

(d) Inform the client prior to the commencement of the service that the client may discontinue the service at any time and the licensee shall honor that election by discontinuing the provision of the service if that request is made;

(e) Keep detailed Subjective Objective Analysis Plan notes for the service such as notes related to all emotional factors that the client reports to the licensee which might impact the client's suitability for the service and the precautions that the licensee has taken to ensure that the service is provided in a manner accounting for those emotional factors; and

(f) Refrain from an act or statement which the client may construe as being sexual in nature.

Section 3. Standards for Documentation. The massage therapist and client shall agree upon the purpose of the massage session.

(1) Documentation shall not be required if the massage session is for general relaxation, a sports event massage, or public demonstration as in chair massage.

(2) If a written plan of treatment is requested or required, the client file shall include the following documentation:

(a) The initial evaluation, which shall include:

1. The client's name, age, and gender;
2. Date of the session; and
3. Pertinent medical history, including:
 - a. Client sensitivities and allergies;
 - b. Medical diagnoses, if available, and the source of the diagnosis;
 - c. Contraindications; and
 - d. Medications as disclosed by the client;

(b) Progress notes signed by the massage therapist rendering the massage therapy, which shall include:

1. Subjective information including the area of complaint as stated by the client and the date of onset;
2. Objective information including any observations and objective testing, if applicable;
3. Ongoing assessments, if applicable;
4. Actions taken by the massage therapist; and
5. The client response to massage therapy treatment; and

(c) A plan of treatment, if applicable, consisting of:

1. Modalities to be rendered;
2. Frequency and duration of treatment;
3. Referral to other professionals, if indicated;
4. Client self-help education and instruction; and
5. The goals or desired outcome of the treatment.

BRANDY MADDING, LMT, Chair

APPROVED BY AGENCY: November 11, 2021

FILED WITH LRC: November 15, 2021 at 10:30 a.m.

PUBLIC HEARING AND PUBLIC COMMENT PERIOD: A public hearing on this administrative regulation shall be held at 1:00 p.m. EST on January 31, 2022, at 500 Mero Street, 133CE, Frankfort, Kentucky 40601. All attendees shall comply with all Executive Orders relating to the State of Emergency as may be in effect on the date of the public hearing, which may

be found at: <https://governor.ky.gov/covid-19>. Members of the public may utilize the following link to attend the meeting by video conference:

Join from PC, Mac, Linux, iOS or Android:

<https://us06web.zoom.us/j/89285321804?pwd=aVQxcVpzL3BwN3N4enI6M3Mxd2hvdz09>

Password: 834891

Or Telephone:

Dial:

USA 713 353 0212

USA 8888227517 (US Toll Free)

Conference code: 213515

Find local AT&T Numbers:

<https://www.teleconference.att.com/servlet/glbAccess?process=1&accessNumber=7133530212&accessCode=213515>

Or an H.323/SIP room system:

H.323:

162.255.37.11 (US West)

162.255.36.11 (US East)

115.114.131.7 (India Mumbai)

115.114.115.7 (India Hyderabad)

213.19.144.110 (Amsterdam Netherlands)

213.244.140.110 (Germany)

103.122.166.55 (Australia Sydney)

103.122.167.55 (Australia Melbourne)

149.137.40.110 (Singapore)

64.211.144.160 (Brazil)

149.137.68.253 (Mexico)

69.174.57.160 (Canada Toronto)

65.39.152.160 (Canada Vancouver)

207.226.132.110 (Japan Tokyo)

149.137.24.110 (Japan Osaka)

Meeting ID: 892 8532 1804

Password: 834891

SIP: 89285321804@zoomcrc.com

Password: 834891

Individuals interested in being heard at this hearing shall notify this agency in writing by five (5) workdays prior to the hearing, of their intent to attend. If no notification of intent to attend the hearing is received by that date (January 24), the hearing may be canceled. This hearing is open to the public. Any person who wishes to be heard will be given an opportunity to comment on the proposed administrative regulation. A transcript of the public hearing will not be made unless a written request for a transcript is made. If you do not wish to be heard at the public hearing, you may submit written comments on the proposed administrative regulation. Written comments shall be accepted through 11:59 p.m. EST on January 31, 2022. Send writ-

ten notification of intent to be heard at the public hearing or written comments on the proposed administrative regulation to the contact person below.

CONTACT PERSON: Kevin Winstead, Commissioner, Department of Professional Licensing, 500 Mero Street, phone (502) 782 - 8805, fax (502) 564-3969, email KevinR.Winstead@ky.gov.

REGULATORY IMPACT ANALYSIS AND TIERING STATEMENT

Contact Person: Kevin Winstead

(1) Provide a brief summary of:

(a) What this administrative regulation does: This administrative regulation sets forth the Code of Ethics that licensed massage therapists are required to follow.

(b) The necessity of this administrative regulation: This administrative regulation is necessary to update and clarify the requirements for practicing massage therapy in Kentucky.

(c) How this administrative regulation conforms to the content of the authorizing statutes: The Board is required by KRS 309.355(1) to regulate the practice of massage therapy. KRS 309.355(3) also authorizes the Board to promulgate administrative regulations regarding the practice of massage therapy.

(d) How this administrative regulation currently assists or will assist in the effective administration of the statutes: The proposed regulation updates and clarifies the requirements for the practice of massage therapy in Kentucky. It replaces 201 KAR 42:060, which expired during the promulgation process for proposed amendments to that administrative regulation.

(2) If this is an amendment to an existing administrative regulation, provide a brief summary of:

(a) How the amendment will change this existing administrative regulation: Not applicable. The proposed regulations replaces 201 KAR 42: 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(b) The necessity of the amendment to this administrative regulation: Not applicable. The proposed regulations replaces 201 KAR 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(c) How the amendment conforms to the content of the authorizing statutes: Not applicable. The proposed regulations replaces 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(d) How the amendment will assist in the effective administration of the statutes: Not applicable. The proposed regulations replaces 201 KAR 42:060, which recently expired during the promulgation process for proposed amendments to that administrative regulation.

(3) List the type and number of individuals, businesses, organizations, or state and local governments affected by this administrative regulation: This regulation will affect the 2,665 individuals licensed by the Board.

(4) Provide an analysis of how the entities identified in question (3) will be impacted by either the implementation of this administrative regulation, if new, or by the change, if it is an amendment, including:

(a) List the actions that each of the regulated entities identified in question (3) will have to take to comply with this administrative regulation or amendment: Licensees will have to educate themselves on requirements and conform their conduct accordingly.

(b) In complying with this administrative regulation or amendment, how much will it cost each of the entities identified in question (3): None. The licensees have to conform their conduct to the Code of Ethics.

(c) As a result of compliance, what benefits will accrue to the entities identified in question (3): Licensees will continue to be licensed as massage therapists and will be in compliance with this administrative regulation.

(5) Provide an estimate of how much it will cost the administrative body to implement this administrative regulation:

(a) Initially: None. It updates and clarifies the requirements to maintain a massage therapy license in Kentucky. No additional complaints or violations are anticipated.

(b) On a continuing basis: None.

(6) What is the source of the funding to be used for the implementation and enforcement of this administrative regulation: There is no cost to the implementation and enforcement of this administrative regulation.

(7) Provide an assessment of whether an increase in fees or funding will be necessary to implement this administrative regulation, if new, or by the change if it is an amendment: No additional funding or increase in fees is needed.

(8) State whether or not this administrative regulation established any fees or directly or indirectly increased any fees: No fees are directly or indirectly established or increased by the administrative regulation.

(9) TIERING: Is tiering applied? Tiering is not applicable as the proposed language will be applied equally to all entities impacted by it.

FISCAL NOTE ON STATE OR LOCAL GOVERNMENT

1. What units, parts or divisions of state or local government (including cities, counties, fire departments, or school districts) will be impacted by this administrative regulation? The Board of Licensure for Massage Therapy.

2. Identify each state or federal statute or federal regulation that requires or authorizes the action taken by the administrative regulation. KRS 309.355(1), 309.355(3)

3. Estimate the effect of this administrative regulation on the expenditures and revenues of a state or local government agency (including cities, counties, fire departments, or school districts) for the first full year the administrative regulation is to be in effect. The administrative regulation will not create any additional expenses or revenues for any state or local government agency after implementation.

(a) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fires, or school districts) for the first year? No revenues are expected to be generated by the provisions of this administrative regulation.

(b) How much revenue will this administrative regulation generate for the state or local government (including cities, counties, fire departments, or school districts) for subsequent years? None.

(c) How much will it cost to administer this program for the first year? There are no additional costs.

(d) How much will it cost to administer this program for subsequent years? See 3(c).

Note: If specific dollar estimates cannot be determined, provide a brief narrative to explain the fiscal impact of the administrative regulation.

Revenues (+/-):

Expenditures:

Other Explanation: